

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF FINANCIAL ASSURANCE
ABILITY TO PAY GUIDANCE
INDIVIDUALS**

Effective date: 9-1-1993; amended: 5-1-1998; amended: 7-1-2002

The policies and procedures set forth in this document are intended solely for the guidance of employees of the Department of Environmental Quality (DEQ). They are not intended to, nor do they constitute rulemaking by DEQ. They may not be relied upon to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. Whether and how DEQ applies this guidance in any given case will depend on the facts of the case.

1. Introduction

This guidance applies in the following situations:

- The Department of Environmental Quality (Department) has identified an individual or sole proprietorship as the responsible person (RP) for a petroleum release or discharge of oil and the individual or sole proprietorship claims inability to pay for remediation costs or the amount due pursuant to applicable cost recovery guidance.
- An individual or sole proprietorship claims inability to pay civil charges during an enforcement action.

2. Authority

Section 9003(h) of Subtitle I of the Resource Conservation and Recovery Act (RCRA) and Virginia Code § 62.1-44.34:11 provide authority for considering an RP's ability to pay in State Lead referrals and in cost recovery matters. Virginia Code § 10.1-1316 of the Air Pollution Control Law provides authority for considering a person's ability to pay a civil charge in enforcement cases involving violations of the APCL and applicable regulations. Pursuant to the Department's Enforcement Manual, the Department may reduce a calculated civil charge where a facility demonstrates that a significant economic hardship would result from imposition of the full civil charge.

3. Definitions

The definitions contained in RCRA Subtitle I, the State Water Control Law (Articles 9 through 11), the Air Pollution Control Law and the Virginia Waste Management Act apply.

4. Review Timing

4.1 Enforcement Program

The Office of Financial Assurance (OFA) generally performs the Ability to Pay analysis upon the request of Regional Office (RO) staff during consent order negotiations.

4.2 Petroleum Site Remediation Program

OFA performs an Ability to Pay analysis at the request of RO staff to determine whether it is appropriate to clean up a site through the State Lead program or to require the RP to conduct the cleanup. Generally, for any site that is classified as a Priority One¹ site or a site which needs assessment to determine the priority, the RO case manager need not wait for the Ability to Pay analysis results to proceed with State Lead referral². For any other type of site where the RP claims inability to pay for the necessary remediation, the RO case manager should request an Ability to Pay analysis and wait for the results before enrolling a site in the State Lead Program.

OFA staff review the application for completeness within fifteen (15) days of its receipt and complete the Ability to Pay analysis and issue a written decision within thirty (30) days of receipt of a complete application. This 30-day period may be extended if the analysis results warrant further inquiry into the applicant's financial status.

5. Application Procedures

5.1 Application Requests

When an individual or sole proprietorship RP has claimed inability to pay for response costs, RO personnel may request an Ability to Pay analysis from OFA. The first step is to request an Ability to Pay application from OFA. The request must include:

- RP name.
- RP address.

¹ A Priority One site is a site where humans or other sensitive receptors (usually a biological receptor or a surface water stream) are impacted by the release. (State Lead Program Interim Operations Guide, Virginia Department of Environmental Quality (December 15, 1995).)

² However, in most cases, an Ability to Pay analysis should be performed after the referral to determine whether the Department will attempt to recover State Lead costs from the RP at a later date.

- RP telephone number(s).
- Pollution complaint number (PC#).
- Site Name.
- Number and type of occurrences and type of tank (e.g., heating oil).
- Release report date.
- Identification of the RP's type of business entity as one of the following:
 - Individual/sole proprietorship;
 - Bankrupt;
 - Corporation;
 - Partnership;
 - Estate;
 - Non Profit Organization;
 - Local Government
 - Other (limited liability company, other entity, etc.);
- Preferred application filing deadline, if less than thirty (30) days.

Note: Only RPs identified as individuals or sole proprietorships are evaluated pursuant to this procedure. At her discretion, the Financial Responsibility Manager (FRM), may evaluate general partners pursuant to this procedure.

5.2 Applicant Preparation

When RO personnel request an Ability to Pay application and provide the information listed in subsection 5.1, OFA staff complete the Ability to Pay Application Instructions (Appendix 1) as indicated below and send the Application Instructions, the Application (Appendix 2) and the forms indicated in the Application Instructions to the RP at the address indicated in the Ability to Pay analysis request.

5.2.1 Applicant Information

The FRM fills in the applicant name, address, telephone number, date the application was sent, PC#/permit#/Registration# (if applicable) and site name on the Application Instructions before mailing and marks on the instruction form the documents which

the RP must include with the application.

5.2.2 Documents to Request for Individual/Sole Proprietorship Applicants

Individual Ability to Pay Application: For individual RPs, the RP must file an Individual Ability to Pay application if he is required to file tax returns. If the RP is not required to file tax returns, then an Individual Ability to Pay application is required only if the applicant's income is more than the current Department of Housing and Urban Development (HUD) low income level for the applicant's locality and household size.

Sole proprietorship (and when applicable, general partner³) applicants must submit an Individual Ability to Pay application.

Most Recent Federal Income Tax Return with All Schedules: Individual applicants must submit a copy of their three most recent federal income tax returns (including all schedules) if the applicant is required to file tax returns. If the applicant is not required to file tax returns, then a signed statement listing the source and amount of income must be submitted, along with proof of income.

Sole proprietorship (and when applicable, general partner) applicants must submit a copy of their three most recent federal income tax returns (including all schedules).

If requested, the applicant must submit W-2 and 1099 forms in addition to the tax return. (This may be necessary where the applicant is the sole RP for the occurrence but files a joint return.)

Financial Responsibility Demonstration: In the case of a petroleum release or discharge of oil, if the RP had a duty to demonstrate financial responsibility at the time of the release report, the RP must submit the financial responsibility demonstration mechanism in effect at the time of the release report along with the application.

Insurance Policy: In the case of a petroleum release or discharge of oil, RPs must submit a complete copy of any/all insurance policy(ies) relating to the site in effect at the time of the release report. At the discretion of the FRM, an insurance certification (Appendix 4) may be requested in lieu of the policy(ies).

³ General partners who are individuals or sole proprietorships are reviewed using this procedure. General partners who are corporations are reviewed using the Corporate Ability to Pay Procedures.

Income Tax Verification: At the FRM's discretion, the Department may require the RP to submit a signed Form 8821 which allows the Department to obtain signed copies of the RP's tax returns directly from the Internal Revenue Service.

Gallongage/Storage Capacity Affidavit: If the occurrence was for a regulated, partially deferred, deferred or excluded underground storage tank, a gallongage affidavit (Appendix 5) is required. If the occurrence was for an exempt UST or small heating oil aboveground storage tank, no affidavit is required. If the occurrence was for a regulated or unregulated aboveground storage tank facility, a storage capacity affidavit (Appendix 6) is required.

Other: The applicant must submit any additional information requested on the Application Instructions.

5.3 Application Submittal

The RP must submit an original, signed Ability to Pay application(s) to the mailing address and by the filing deadline specified in the Application Instructions.

5.4 Application Tracking

OFA staff update the necessary Ability to Pay fields in the relevant Comprehensive Environmental Database System (CEDS) module at the time of application issuance and receipt and when the evaluation is complete. OFA staff should utilize this database to track filing deadlines and claim disposition.

6. Review Procedures

The Environmental Protection Agency (EPA) has developed a computer model (INDIPAY) which analyzes an individual RP's ability to pay for the environmental costs associated with an enforcement or cost recovery action. The Department utilizes this model to determine whether a individual, sole proprietor and, in some cases, a general partner is in a financial position to pay for corrective action costs or civil charges. More detailed information on INDIPAY also can be found in the INDIPAY User's Manual. Both the User's Manual and the computer model may be downloaded from the web at <http://es.epa.gov/oeca/models/indipay.html>. Electronic copies of the Manual are available from OFA.

6.1 Phase I--Floor Income Value

The Phase I income test sets the floor value required for an RP to continue to Phase II. To begin the Phase I analysis, the FRM enters data into the INDIPAY model from the RP's three most recent tax returns. If the RP's income is less than or equal to the HUD low-income value⁴ for the RP's locality and family size and the RP has no interest or dividend income greater than \$400 nor business, capital gain, rent, royalty, partnership, estate, trust or farm income, then the RP is considered unable to pay, is not required to pay his financial responsibility requirement, and the site may be referred for State Lead response after it has been determined there are no other viable RPs for the site. If the RP's income is greater than the HUD low-income value for the RP's locality and family size and/or if the RP reports income from any of the sources previously indicated, then the analysis must proceed to Phase II.

6.2 Phase II--Cash Flow Analysis

RP's can pay a civil charge or site remediation costs with cash income left over after paying for living expenses. The Phase II analysis estimates the RP's cash flow by identifying after-tax income from the RP's tax returns and deducting living expenses and a contingency allowance for emergencies. To begin the Phase II analysis, the FRM enters the data contained in the INDIPAY Application Claim Form (Appendix 2) as instructed by the model. The Application form requires the RP to provide information on such items as household size, net worth, and current living expenses. The model automatically adds those tax deductions that do not constitute actual cash out-of-pocket back into the RP's total income.

6.2.1 Income

The Model looks at several income sources when estimating available cash flow. Those sources include wages and salaries, interest and dividends, capital gains and losses, business income, farm income and retirement-related income.

6.2.2 Expenses

Living expenses are reported on the application form (Appendix 2). The FRM should examine each expense to determine whether expenses have been overstated. Where it appears that an RP has overstated an expense, the *South* regional table in

⁴ The U.S. Department of Housing and Urban Development's (HUD's) low-income value is reported on a per locality per family size basis each year. Annual updates of this information may be downloaded from the Web at <http://www.huduser.org/datasets/il.html> or obtained from OFA. The Department uses the HUD income tables because they (1) are based on census data; (2) are updated regularly according to a consistent methodology; (3) establish several levels of income guidelines; and (4) are used by other government agencies.

the Relative Importance of Components in the Consumer Price Index Bulletin (Bulletin)⁵ may be used to make adjustments to claimed expenses without contacting the RP. With this approach, for the expense in question, the FRM should multiply the RP's total current expenses by the percent importance for the expense in question listed in the *South* regional table in the Bulletin. The product will replace the overstated expense. Alternatively, the FRM may exclude the expense or contact the RP to request proof or an explanation to support the expense claimed. Any time the FRM adjusts an expense, she should document the file with the reason for the adjustment.

Additionally, where an expense appears to be inconsistent with mortgage, credit card⁶ and other information appearing in the application form, the FRM may adjust or allow the expense, depending on the circumstances presented by the application. In the alternative, the FRM may contact the RP to request clarification. The reason for expense adjustments must be documented.

6.2.3 Contingency Allowance for Emergencies

The contingency allowance applied by the model represents a safety margin to cover unforeseen expenses. As the RP's income increases, the contingency allowance (which is calculated as a percentage of total expenses) decreases in order to keep the allowance even among income categories. To determine the contingency allowance, the model first looks at total income before subtracting expenses. The model then compares the income figure to the HUD median household income in the same locality. The three income categories are: (1) less than 75% of median household income; (2) 75% to 125% of median household income; and (3) greater than 125% of median household income. The contingency allowance is determined as follows:

Income Less Than 75% of Median: The contingency allowance is 15% of the RP's total allowable living expenses.

Income 75% to 125% of Median: The contingency allowance is 10% of the RP's total allowable living expenses.

⁵ The Bulletin is prepared by the U. S. Department of Labor, Bureau of Labor Statistics and is updated each April. A copy of the Bulletin may be downloaded from the Bureau of Labor Statistics Web site at <http://www.bls.gov/cpi/home.htm>. Scroll down to the list of Tables entitled "*Tables and publications containing Consumer Price Indexes*" and click on the PDF link under "*Relative Importance of Components in the Consumer Price Index, all areas*". The data also may be obtained by calling the Bureau of Labor and Statistics at (202) 691-5200.

⁶ The maximum monthly credit card payment permitted as an expense is 5% of the outstanding balance. This is the standard allowance used by area mortgage lenders.

Income Greater Than 125% of Median: The contingency allowance is 5% of the RP's total allowable living expenses.

The model deducts the contingency allowance along with the total expenses from an RP's total income to obtain the RP's available cash flow.

6.3 Phase II Analysis--Debt Capacity

An RP also can pay a civil charge or site remediation costs by taking out a loan. The INDIPAY model looks at an RP's ability to finance a civil charge or cleanup costs through a 5-year loan. Most commercial lending institutions use a rule-of-thumb that individuals can support debt payments of up to 36 percent of their total income. The model calculates the RP's available debt capacity, which is the difference between this 36 percent guideline and the RP's current debt payment to income ratio. As part of the analysis, the model provides a summary of the impacts the additional debt will have on the RP's financial condition. The FRM does not have to enter any additional data for this portion of the analysis. The model conducts it simultaneously with the cash flow analysis described in section 6.2. At the conclusion of the analysis, the model will indicate how much of the proposed civil charge and/or clean up cost the RP can pay by obtaining a 5-year supportable loan.

6.4 Phase II Analysis Results

To determine how much money is available to the RP to pay a civil charge or site remediation costs, the FRM should compare the results of the debt capacity analysis with the results of the cash flow analysis. Providing the model with proposed civil charge and/or corrective action amounts will result in a determination from the model of whether the RP can pay that amount. Using "\$0" as the civil charge and corrective action values will generate an actual amount that the RP can pay. Generally, if the model indicates that the RP is able to pay through both cash flow and debt financing, the FRM should choose the larger of the amounts as the total amount the RP is able to pay. The exception to this is if the model shows that the applicant can afford a contribution by borrowing money but indicates that such contribution would cause the RP's available cash flow to become negative. In this situation, the lower dollar result of the two scenarios is the amount the RP is able to pay.

6.5 Adjustments

If the RP reports any of the following in the application materials, the Phase I or Phase II results may need to be recalculated using the additional information as indicated: (1) anticipated change in financial condition; (2) anticipated real property transaction (either sale

or purchase); (3) real or personal property held by another on behalf of the applicant; (4) applicant is a party in a pending lawsuit; (5) repossession of any belongings in past three years; (6) applicant is a trustee, executor or administrator; (7) applicant is a beneficiary of an estate or a participant in a profit sharing plan; (8) declaration of bankruptcy in the last seven years; or (9) receipt of federal aid or public assistance. The FRM, at her discretion, will determine the need for recalculation.

6.6 Conclusion of Financial Analysis

6.6.1 Ability to Pay (ATP) Total Is "0"

Civil Charge: Where the ATP total is 0, OFA will communicate the results of the analysis to the RO. The RO will evaluate the appropriate civil charge in accordance with the Enforcement Manual.

Petroleum Release or Discharge of Oil: Where the ATP total is 0, the RP is considered unable to pay and the RO may refer the contaminated site for State Lead cleanup after determining there are no other viable RPs for the site.

6.6.2 ATP Total Is Greater Than "0" but less than Cleanup Cost/Civil Charge

Civil Charge: Where the ATP total is more than 0 but less than the calculated civil charge, the FRM communicates the ATP total to the RO as the portion of the civil charge that the analysis indicates the RP is able to pay. The RO will evaluate the appropriate civil charge in accordance with the Enforcement Manual.

Petroleum Release or Discharge of Oil: Where the ATP total is more than 0, the FRM compares the ATP total to the estimated cost of performing the next phase of cleanup. This cost estimate may be obtained from the RP or from the RO responsible for overseeing the site cleanup. Where the ATP total is less than the cleanup estimate, the RP is considered unable to pay and the RO may refer the contaminated site for State Lead cleanup unless other viable RPs exist.

Cost Recovery:

ATP Total Less Than Cost Recovery Floor

Where the ATP total is also less than the cost recovery floor (i.e., the estimated administrative cost of pursuing a cost recovery claim), then the FRM notes the file that Department will not pursue a cost recovery against

the RP to recover any State Lead funds spent at the site and make the appropriate entry in CEDS.

ATP Total More Than Cost Recovery Floor

Where the ATP total is less than the cleanup estimate but greater than the cost recovery floor, then the FRM notes the file that cost recovery should proceed for the site upon completion of the State Lead action (or after the time in which at least the amount to be recovered has been obligated). The FRM also indicates in the decision memo to the appropriate RO that RO staff should track all time spent on the site for cost recovery purposes. The appropriate Department cost recovery procedure will be applied to determine the amount subject to recovery.

6.6.3 ATP Total At Least Equal to Cleanup Estimate or Civil Charge

Where the ATP total is greater than or equal to the cleanup cost estimate, the RP is considered able to pay and must proceed with the next phase of cleanup, in the case of a petroleum release. This is true even where the ATP total is less than the cost recovery floor, but nonetheless, greater than or equal to the estimated cost of the next phase. If the Ability to Pay determination follows after the site has been referred to the State Lead program, the FRM notes in the file that the Department should initiate a cost recovery action to recoup the State Lead funds spent on the site. The FRM also indicates in the decision memo to the appropriate RO that RO staff should track all time spent on the site for cost recovery purposes.

In an enforcement action, where the ATP total is greater than or equal to the calculated civil charge, the RP is considered able to pay and the results of the analysis will be communicated to the RO. The RO will evaluate the appropriate civil charge in accordance with the Enforcement Manual.

7. ATP Recommendation

In the case of a petroleum release or discharge of oil, OFA staff provides a written indication of ability to pay to the RP with a copy to the appropriate Regional Office (see Appendix 7 for sample letter). OFA staff also provide a written indication of ability to pay to the appropriate RO via memorandum. Upon receipt of a memorandum indicating inability to pay, RO staff should investigate further to locate other possible RPs for the site. If the FRM performs the Ability to Pay analysis pursuant to an enforcement action, OFA will provide a written summary of the analysis to the RO enforcement specialist via memorandum only, unless the RO requests otherwise.

8. Subsequent Applications

In the case of a petroleum release or discharge of oil, if the Department determines that an RP is able to pay and thus must undertake owner led corrective action, the RP may file a second ability to pay application during the course of the cleanup (and subsequent applications, where applicable) if the applicant articulates changed circumstances that have resulted in the deterioration of its financial condition since the time of the prior application.

9. Suspensions

Where an RP has failed to submit the required application materials by the filing deadline (usually, within thirty (30) days of the date the claim form was mailed) and has failed to obtain an extension of the deadline, the FRM may suspend any further analysis, declare the RP able to pay, and refer the RP to the Regional Office for appropriate action. In the case of a petroleum release, while RPs are participating in the Ability to Pay Program and are in compliance with the requirements of the Program (i.e., have not missed applicable filing deadlines), remediation activity requirements and report filing deadlines with respect to the occurrence for which the Ability to Pay application was issued are held in abeyance. RO remediation and report filing deadlines may run concurrently with Ability to Pay application filing deadlines.

10. File of Record

Upon receipt of a request for an ability to pay application, OFA staff will establish an ability to pay file. The Department treats all tax returns and other documents containing information derived from tax returns as confidential and exempt from Virginia Freedom of Information Act requests pursuant to Section 2.2-3705 of the Virginia Freedom of Information Act. Section 2.2-3705 Va. Code Ann. (2001). All information and analyses will be maintained in each applicant's file for a period of 5 years or until site closure, whichever is longer. After this time, the file will be destroyed.

Director, Division of Waste Program
Coordination

Date

**ABILITY TO PAY GUIDANCE
INDIVIDUALS**

**APPENDIX 1
ABILITY TO PAY APPLICATION
INSTRUCTIONS**

ABILITY TO PAY APPLICATION INSTRUCTIONS

Applicant Name:	
Address:	
Telephone Number:	(H) _____ (W) _____
Date Application Sent:	
PC#/Permit # and Site Name	

To complete the Ability to Pay application, you must submit the documents marked below:

INDIVIDUAL/PARTNERSHIP APPLICANTS

- _____ 1. A **signed** copy of your three most recent federal individual income tax returns including **all schedules**.
- _____ 2. A copy of the W-2 forms and 1099 forms used to support your most recent tax returns.
- _____ 3. A completed, **signed and notarized** Ability to Pay Claim form.
- _____ 4. A copy of the demonstration of financial responsibility for the year in which the release was reported to DEQ.
- _____ 5. A completed, signed and notarized Certification of Annual Gallonage.
- _____ 6. A completed, signed and notarized Insurance Certification form and a complete copy of the insurance policy for the affected property.
- _____ 7. A completed, signed and notarized AST Storage Capacity Affidavit.
- _____ 8. A list of all general partners, using the form enclosed.
- _____ 9. Other: _____

BANKRUPT APPLICANTS

- _____ 1. An original **signed and notarized** Ability to Pay Bankruptcy Application form.
- _____ 2. A date-stamped copy of your Bankruptcy Petition.
- _____ 3. A copy of the demonstration of financial responsibility for the year in which the release was reported to DEQ.
- _____ 4. A completed, signed and notarized Insurance Certification form and a complete copy of the insurance policy for the affected property.
- _____ 5. A completed, signed and notarized Certification of Annual Gallonage.
- _____ 6. A completed, signed and notarized AST Storage Capacity Affidavit.
- _____ 7. Other:_____

CORPORATE/PARTNERSHIP APPLICANTS

- _____ 1. A completed, **signed and notarized** Corporate Ability to Pay Claim form and all documents requested in the Claim form.
- _____ 2. A completed, signed and notarized Partnership Ability to Pay application form and all documents requested in the application form.
- _____ 3. A copy of the demonstration of financial responsibility for the year in which the release was reported to DEQ.
- _____ 4. A completed, signed and notarized Insurance Certification form and a complete copy of the insurance policy for the affected property.
- _____ 5. Other:_____

LOCAL GOVERNMENT APPLICANTS

- _____ 1. A completed, **signed and notarized** Local Government Ability to Pay Claim Application and all documents requested in the Application form.
- _____ 2. Other:_____

FILING DEADLINE

The deadline for submission of these documents is _____ calendar days from the date these

instructions were sent to you.

ADDITIONAL REQUIREMENTS

If you are involved in a site remediation for a petroleum release, depending on the results of the initial analysis, you may be required to submit estimates of the cost of performing the next phase of corrective action required at the site. If estimates are required, the Department will contact you.

WHERE TO SUBMIT APPLICATION AND OBTAIN ASSISTANCE

Please submit all application materials to: **Department of Environmental Quality, Office of Financial Assurance 5th Floor, P. O. Box 10009, Richmond, VA 23240-0009.**

If you require assistance in completing the application materials, please call _____ at _____.

SPECIAL INSTRUCTIONS

cc: Regional Office:

- ____ PRO
- ____ TRO
- ____ NRO
- ____ WCRO
- ____ SCRO
- ____ SWRO
- ____ VRO
- ____ Other Regional Office Staff: _____

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**ABILITY TO PAY GUIDANCE
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**APPENDIX 2
APPLICATION FORM**

INDIVIDUAL ABILITY TO PAY CLAIM

PC/Registration/Permit # _____

We are requesting financial information to help us evaluate your ability to contribute funds for remediation of the petroleum release at the site referenced by the above PC# or your ability to pay civil charges as a condition of a negotiated Consent Order. The Department of Environmental Quality may request documentation supporting the information you provide on this form or in your tax return.

Name:	Age:
Spouse's Name:	
Address:	
Phone Number: Home ()	Work ()
County of Residence:	
Does the information provided on your federal income tax return accurately reflect your current financial situation? Please describe below additional information that you would like us to consider in evaluating your case (for example, anticipated major expenditures or changes in income.) Use additional sheets if necessary.	
Are you currently participating in any type of federal or state assistance program (for example, Supplemental Security Income (SSI), food stamps, housing assistance, home heating assistance, or Medicaid)? Please describe below. Attach additional pages if necessary.	

INDIVIDUAL FINANCIAL DATA REQUEST FORM

This form requests information regarding your personal financial status. The data will be used to evaluate your ability to pay for civil charges and/or corrective action costs. If there is not enough space for your answers, please use additional sheets of paper. Please note that we may request further documentation of any of your responses. We welcome any other information you wish to provide supporting your claim, particularly if you feel your situation is not adequately described through the information requested here.

CERTIFICATION

I declare that this statement of assets, liabilities, living expenses and other information is true, correct and complete to the best of my knowledge and belief.

IN THE EVENT THE CONTAMINATED SITE REFERENCED BY THE PREVIOUSLY STATED POLLUTION COMPLAINT NUMBER (PC#) IS REFERRED FOR STATE LEAD CORRECTIVE ACTION, I AGREE TO GRANT THE COMMONWEALTH OF VIRGINIA, ITS EMPLOYEES, AGENTS AND CONTRACTORS ALL NECESSARY ACCESS TO THE SITE AND SURROUNDING PREMISES TO UNDERTAKE ALL NECESSARY INVESTIGATION AND REMEDIATION ACTIVITIES, INCLUDING BUT NOT LIMITED TO INSTALLATION, SAMPLING AND MAINTENANCE OF MONITORING WELLS; SOIL SAMPLING; INSTALLATION AND MAINTENANCE OF REMEDIATION EQUIPMENT; TESTING AND REMOVAL OF UNDERGROUND STORAGE TANKS; SURVEYING OF BUILDINGS FOR VAPOR IMPACTS; AND REMOVAL OF CONTAMINATED SOIL AND OTHER MEDIA.

Signature

Date

State/Commonwealth of _____)
_____)
_____)

to wit:

Subscribed and sworn to before me by _____ this _____ day of _____, 200____.
Name of Applicant

Notary Public

My commission expires: _____

PART I. BACKGROUND INFORMATION

A. **Members of household.** List the head of the household and all persons living with you.

Name	Age	Relationship to Head of Household	Currently Employed?

B. **Employment.** List all jobs held by persons in the household.

Name	Employer	Length of Employment	Annual Salary

PART II. CURRENT LIVING EXPENSES

Please list personal living expenses that were typical during the last year and indicate whether the amount listed is paid weekly, monthly, quarterly or yearly. Please indicate if any of these values are likely to change significantly in the current year. Please do not include business expenses; specifically, **do not** list expenses deducted on federal income tax form 1040 Schedules C, E or F.

Expense	Amount	Weekly	Monthly	Quarterly	Yearly	Agency Use
<u>A. Living Expenses</u>						
1. Rent						
2. Home Maintenance						
3. Auto/Transportation						
4. a. Heating						
b. Electricity						
c. Water/Sewer						
d. Telephone						
5. Food						
6. Clothing/Personal						
7. Medical Costs						
<u>B. Debt Payments</u>						
1. Mortgage Payment						
2. Car Payment						
3. Credit Card Payments						
4. Educational Loans						
<u>C. Insurance</u>						
1. Household Insurance						
2. Life Insurance						
3. Auto Insurance						
4. Medical Insurance						

Current Living Expenses Table (cont.)						
Expense	Amount	Weekly	Monthly	Quarterly	Yearly	Agency Use
D. Taxes						
1. Property Taxes						
2. Federal Income Taxes						
3. State Income Taxes						
4. FICA						
E. Other Expenses						
1. Childcare						
2. Current Education Cost						
3. Professional Services						
4. Other (itemize)						
TOTAL EXPENSES						

PART III. ASSETS

A. BANK ACCOUNTS (Checking, Savings, Money Market, Etc.)

Name of Bank/Credit Union	Type of Account	Current Balance

B. INVESTMENTS (Stocks, Bonds, Mutual Funds, Options, Futures, CDs, REITs, Etc.)

Investment	Number of Shares/Units	Current Market Value (per share)

C. RETIREMENT FUNDS AND ACCOUNTS (IRAs, 401(k), Keough, vested interest in company retirement fund, etc.)

Description of Account	Estimated Market Value

D. LIFE INSURANCE POLICIES

Policy Holder	Issuing Company	Policy Value	Cash Value

E. VEHICLES (Cars, trucks, motorcycles, recreation vehicles, boats, airplanes, etc.)

Model	Year	Estimated Market Value

F. PERSONAL PROPERTY (Household goods and furniture, jewelry, art, antiques, collections, precious metals, etc. **Only list items with a value greater than \$1,500.00**)

Type of Property	Estimated Market Value

G. REAL ESTATE (Land, buildings, land with buildings)

Location	Description of Property	Estimated Market Value

H. OTHER ASSETS

Type of Asset	Estimated Market Value

PART IV. DEBT

A. CREDIT CARDS AND LINES OF CREDIT

Credit Card or Line of Credit	Owed To	Balance Due

B. VEHICLE LOANS (Cars, trucks, motorcycles, recreation vehicles, motor homes, boats, planes, etc.)

Vehicle (Model and Year)	Owed To	Balance Due

C. FURNITURE AND HOUSEHOLD GOODS LOANS

List Item	Owed To	Balance Due

D. MORTGAGES AND REAL ESTATE LOANS

Type of Loan	Owed To	Secured Property	Balance Due

E. OTHER DEBT (Amounts due to individuals, fixed obligations, taxes owed, overdue alimony or child support, etc.)

Type of Debt	Owed To	Balance Due

PART V. ADDITIONAL INFORMATION

Please answer the following questions. For any question that you answer "Yes," please provide additional information on separate pages or at the bottom of this page.

QUESTION	YES	NO
1. Do you have any reason to believe that your financial situation will change in the next year?		
2. Are you currently selling or purchasing any real estate?		
3. Are you involved or affiliated with any other sole proprietorships, partnerships or corporations?		
4. Is any (or any entity) holding real or personal property on your behalf (e.g., a trust)?		
5. Are you a party in any pending lawsuit?		
6. Have any of your belongings been repossessed in the last three years?		
7. Are you a Trustee, Executor or Administrator?		
8. Are you a participant or beneficiary or an estate or profit sharing plan?		
9. Have you declared bankruptcy in the last seven years?		
10. Do you receive any type of federal aid or public assistance?		

**ABILITY TO PAY GUIDANCE
INDIVIDUALS**

**APPENDIX 3
PHASE I AND II OUTPUTS**

**ABILITY TO PAY GUIDANCE
INDIVIDUALS**

**APPENDIX 4
INSURANCE CERTIFICATION**

INSURANCE CERTIFICATION

I, the undersigned, hereby certify that to the best of my knowledge and belief

(check one of the following):

_____ insurance is available (attach a copy of the policy, declarations page and endorsements)

_____ insurance is not available to cover costs associated with the environmental contamination at the site referenced by

PC#/permit #/site name _____.

I warrant and represent that I have the authority to make this certification.

Signature

Date

Name (please print)

Title (if any)

THIS STATEMENT MUST BE NOTARIZED

State/Commonwealth of _____)

)

to wit:

City/County of _____)

)

Subscribed and sworn to before me by _____ on this
____ day of _____, 200__.

Notary Public

My commission expires: _____.

**ABILITY TO PAY GUIDANCE
INDIVIDUALS**

**APPENDIX 5
GALLONAGE AFFIDAVIT**

CERTIFICATION OF ANNUAL GALLONAGE

PC# _____

NOW COMES _____, who being duly sworn, deposes and says:
(Name of Owner/Operator)

I, _____ of
(Name of Owner/Operator)

_____ declare that:
(Address)

The number of gallons pumped from _____ to _____
(start date) (end date)

through all regulated underground storage tanks which owner/operator owns and operates in the
Commonwealth of Virginia is _____.
(Number of Gallons)

I swear that the declarations in the preceding affidavit are true to the best of my knowledge and belief.

(Print Name of Owner/Operator)

By: _____
(Signature)

State of _____)
City/County of _____) to wit:

Subscribed and sworn to before me by _____ on this _____
day of _____, 200__.

Notary Public
My Commission expires: _____

**ABILITY TO PAY GUIDANCE
INDIVIDUALS**

**APPENDIX 6
STORAGE CAPACITY AFFIDAVIT**

Commonwealth of Virginia)
)
City/County of _____) to wit:

Subscribed and sworn to before me by _____, on this
_____ day of _____, 200_____.

Notary Public

My commission expires: _____.

**ABILITY TO PAY GUIDANCE
INDIVIDUALS**

**APPENDIX 7
SAMPLE LETTERS**

(Letter to RP in UST Program deemed Unable to Pay)

(Date)

(Applicant Name)

(Address)

Re: Ability to Pay Determination; PC# _____; (Site Name)

Dear (Applicant Name):

The Department of Environmental Quality (DEQ) has completed an assessment of the Ability to Pay application you submitted and our analysis indicates that you are unable to pay for corrective action costs. DEQ will seek to identify other responsible parties for this site. If no other responsible parties who are financially capable of performing the remediation are identified, the Commonwealth of Virginia may undertake the necessary corrective action procedures, up to total per occurrence costs of \$1 million.

Please note that DEQ may use either state or federal funds for corrective action at this site. If federal funds are used, federal law may require you to complete another Ability to Pay application after the completion of the corrective action to determine whether you must repay federal funds expended for remediation of the site. The Department also has the option of pursuing recovery of any state funds expended for remediation from you as well, in the event your financial condition changes so that you are able to pay any corrective action costs.

If you have any questions regarding this matter, please contact me at (804) 698-XXXX.

Sincerely,

(Name)

Financial Responsibility Manager

cc: RO contact

(Letter to RP in UST program deemed Able to Pay)

(Date)

(Applicant Name)

(Address)

Re: Ability to Pay Determination; PC# _____; (Site Name)

Dear Applicant Name:

The Department has completed a review of your Ability to Pay application, and our analysis indicates that you are able to pay the corrective action costs associated with cleaning up the referenced petroleum release.

[Give broad explanation of why RP was determined able to pay]

Please be aware that for eligible releases you may submit for reimbursement from the Virginia Petroleum Storage Tank Fund of reasonable costs for eligible activities and materials pre-approved and verified by [RO name] Regional Office staff. For releases from a heating oil tank, you must meet a financial responsibility requirement of \$500 with approved costs before any reimbursement will be issued. To qualify for reimbursement, please follow the procedures contained in the Department of Environmental Quality's Reimbursement Guidance manual. The manual may be downloaded from the Department's Web site at <http://www.deq.state.va.us/tanks/reimbrs.html> or you may contact me for a copy.

Please feel free to contact me at [number] if you have any questions,

Sincerely,

[Financial Responsibility Manager]

Enc.